

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 BLAKE L. ANDERSON,

4 Plaintiff,

5 v.

6 STATE OF NEVADA, *et al.*,

7 Defendants.
8

Case No.: 3:18-cv-00443-MMD -WGC

**REPORT & RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

9 This Report and Recommendation is made to the Honorable Miranda M. Du, United States
10 District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.
11 § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and *pro se*
13 complaint (ECF No. 1-1). It is recommended that the IFP application be denied, and that the action
14 be dismissed because while Plaintiff brings this as a civil rights action under 42 U.S.C. § 1983, his
15 claims sound in habeas.

16 Plaintiff alleges that his underlying criminal conviction should be void because his power
17 of attorney was not given proper notice of the criminal proceedings.

18 If successful, the result of Plaintiff's claims would be a reversal of his conviction.
19 Therefore, the action should be dismissed. *Heck v. Humphrey*, 512 U.S. 477, 480-82 (1994);
20 *Wilkerson v. Wheeler*, 772 F.3d 834, 840 (9th Cir. 2014). Plaintiff should be advised that he may
21 file a habeas petition asserting these arguments after exhausting his State remedies.

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RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an order: **DENYING** Plaintiff's IFP application (ECF No. 1); **DISMISSING** this action without prejudice; and, advising Plaintiff that he may file a habeas petition after exhausting his State remedies.

The Plaintiff should be aware of the following:

1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

DATED: November 6, 2018.



WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE